

**REMARKS**

Claims 34-63 were presented for examination and claims 34-63 stand rejected. In the current amendment, claims 34 and 49 have been amended. Support for the amended claims can be found in paragraph [0017], lines 1-5, and in paragraph [0037], Figure 8; and throughout the remainder of the specification. No new matter has been introduced. Upon entry of the current amendment, claims 34-63 will be presented for examination, of which claims 34 and 49 are independent. Applicants submit that claims 34-63 are in condition for allowance.

The following comments address all stated grounds of rejection. Applicants respectfully traverse all rejections and urge the Examiner to pass the claims to allowance in view of the remarks set forth below.

**CLAIM REJECTIONS UNDER 35 U.S.C. §103****I. Claims Rejected Under 35 U.S.C. §103**

Claims 34-63 stand rejected under 35 U.S.C. §103 as unpatentable over to U.S. Patent No. 6,360,270 to Cherkasova et al. (“Cherkasova”) in view of U.S. Patent No. 7,024,477 to Allan (“Allan”). Claims 34 and 49 are amended independent claims. Claims 35-48 depend on and incorporate all the patentable subject matter of independent claim 34, as amended. Claims 50-63 depend on and incorporate all the patentable subject matter of independent claim 49, as amended. Applicants respectfully traverse this rejection and submit that Cherkasova in view of Allan fails to teach or suggest each and every element recited in claims 34-63, as amended.

A. Independent Claims 34 and 49 Patentable over Cherkasova and Allan

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. Independent claims 34 and 49 are directed towards a method and system claim respectively for managing throughput of a server while avoiding overload of the server. These independent claims recite an interface unit transmitting client requests to a server to maintain performance of server throughput within a predetermined threshold range and intercepting a request from a client to open a transport layer connection with the server. The interface unit determines from monitoring changes in response times from the server and changes of a rate in which the response times from the server change that the performance of the server throughput exceeds the predetermined threshold range. Applicants submit that neither Cherkasova nor Allan, alone or in combination, disclose, teach or suggest each and every element of the claimed invention.

In the claimed invention, an interface unit determines from monitoring changes in response times from the server and changes of a rate in which the response times from the server change that the performance of the server throughput exceeds the predetermined threshold range. As acknowledged by the Examiner in the Office Action, Cherkasova fails to disclose, teach or suggest this feature of the claimed invention. The Examiner had previously cited Allan for the purpose of suggesting that one ordinarily skilled in art might modify Cherkasova to determine from monitoring responses to the client requests that the performance of the server throughput exceeds a predetermined threshold range. However, Allan is concerned with the total time a web page and all its inline content is loaded from multiple servers. Allan does not monitor changes of a rate in which the

response times from a server change. Instead, Allan merely measures a response time for each inline element to be received from the server responding with the element. Allan is not concerned with monitoring a rate of change in response times from a server as in the claimed invention. Thus, Cherkasova and Allan fail to teach or suggest an interference unit monitoring the responses to client requests intercepted by the interface unit changes in response times of the server and changes of a rate in which the response times change.

Because Cherkasova and Allan, alone or in combination, fail to disclose, teach or suggest each and every element of the claimed invention, Applicants submit the amended independent claims 34 and 49 are patentable and in condition for allowance. Claims 35-48 depend on and incorporate all patentable limitations of claim 34, and claims 50-63 depend on and incorporate all the patentable limitations of claim. Therefore, Applicants also submit that claims 35-63 are patentable and in condition for allowance.

## II. Rejection of Dependent Claims Under 35 U.S.C. §103

Claims 40, 41, 55 and 56 are rejected by the Examiner as unpatentable over Cherkasova in view of Allan in further view of U.S. Patent No. 6,055,564 to Phaal (“Phaal”). Claims 40, 41, depend on and incorporate all the patentable subject matter of independent claim 34. Claims 55 and 56 depend on and incorporate all the patentable subject matter of independent claim 49. As Phaal is concerned with prioritizing clients within a server queue, Phaal as with Cherkasova or Allan, fails to disclose, teach or suggest an interference unit monitoring the responses to client requests intercepted by the interface unit changes in response times of the server and changes of a rate in which the

response times change, Applicants also submit that claims 40, 41, 55, and 56 are patentable and in condition for allowance

Claims 42-44 and 57-59 are rejected under 35 U.S.C. §103 as unpatentable over Cherkasova in view of Allan in further view of U.S. Published Application No. US 2002/0120743 to Shabtay et al. (“Shabtay”). Claims 42-44 depend on and incorporate all the patentable subject matter of independent claim 34. Claims 57-59 depend on and incorporate all the patentable subject matter of independent claim 49. As with Cherkasova and Allan, Shabtay fails to disclose, teach or suggest an interference unit monitoring the responses to client requests intercepted by the interface unit changes in response times of the server and changes of a rate in which the response times change, Applicants submit that claims 42-44 and 57-59 are patentable and in condition for allowance.

### **CONCLUSION**

In light of the aforementioned amendments and arguments, Applicants contend that each of the Examiners rejections has been adequately addressed and all of the pending claims are in condition for allowance. Accordingly, Applicants respectfully request reconsideration, withdrawal of all grounds of rejection, and allowance of all of the pending claims.

Should the Examiner feel that a telephone conference with Applicants’ attorney would expedite prosecution of this application, the Examiner is urged to contact the Applicants’ attorney at the telephone number identified below.

Applicants believe that, with the exception of the fee for the RCE, no additional fees are due at this time. If any additional fees are due, authorization is hereby given to charge any additional fees to Deposit Account 03-1721.

Respectfully submitted,

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Dated: October 31, 2007

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